

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOUGLAS JENDRAS,

Plaintiff,

Case No.11 Civ. 5409 (KMK)

-against-

**AFFIRMATION OF FRED
WEINSTEIN**

ABOVENET, INC.,

Defendant.

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I, Fred D. Weinstein, an attorney admitted to practice before this Court, affirm under penalty of perjury that:

1. I am a member of the law firm of Kurzman Eisenberg Corbin and Lever, LLP, the attorneys for the Plaintiff Douglas Jendras in the above-captioned action.
2. I make this affirmation in opposition to Defendant's Motion for Summary Judgment dismissing Plaintiff's complaint.
3. Annexed hereto as Exhibit "1" is a true copy of the transcript of the deposition of Rajiv Datta conducted on April 24, 2012 and July 20, 2012.
4. Annexed hereto as Exhibit "2" is a true copy of the transcript of the deposition of William LaPerch conducted on April 2, 2012.
5. Annexed hereto as Exhibit "3" is a true copy of the transcript of the deposition of Robert Sokota conducted on March 9, 2012.
6. Annexed hereto as Exhibit "4" is a true copy of the transcript of the deposition of Sheila Chang conducted on March 14, 2012.

7. Annexed hereto as Exhibit "5" is a true copy of the transcript of the deposition of Douglas Jendras conducted on April 5, 2012.

8. Annexed hereto as Exhibit "6" is a true and correct copy of Plaintiff's Deposition Exhibit 31.

9. Annexed hereto as Exhibit "7" is a true and correct copy of the lower court's decision that was the subject of the appeal decided by the Appellate Division, Second Department in Race v. Goldstar Jewellery, LLC, 84 A.D.3d 1342, 924 N.Y.S.2d 166, 167 (2d Dept. 2011).

WHEREFORE, the Plaintiff respectfully request that the Court deny Defendant's Motion in its entirety and grant such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York
January 18, 2013

A handwritten signature in black ink, appearing to read 'F. Weinstein', is written over a horizontal line.

Fred D. Weinstein